(2)

Division Bench (Criminal)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR

Criminal Appeal No. 1791 of 1997

APPELLANT (IN JAIL) : Ras Bai, aged about 30 years, w/o Shri Suresh Satnami, r/o village Pachari, Police Station - Akaltara, Tehsil Janjgir, District Bilaspur.

VERSUS

RESPONDENT : State of Madhya Pradesh through the District Magistrate, Bilaspur.

CRIMINAL APPEAL UNDER SECTION 374, CODE OF CRIMINAL PROCEDURE, 1973.

(25)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.2363/97 and 1741/97 **सन्** ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench: -

Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Dhirendra Mishra, JJ.

28-11-2006

Mr. Abhay Tiwari , counsel for the appellants in Cr.A.No.2363/1997.

Mr. Vinod Tekam, counsel for the appellant in Cr.A.No.1741/1997.

Mr. U.N.S. Deo, Additional Public Prosecutor with Mr. Akhil Mishra, Panel Lawyer for the State/respondent.

Oral judgment dictated on *Dais*.

Per L.C. Bhadoo, J: -

Criminal Appeal No.2363/1997 filed by Lalji & Ashok Kumar through the Superintendent, Central Jail, Raipur and Criminal Appeal No.1741/1997 filed by Rasbai are being disposed of by this common judgment, as these appeals are arising out of the same incident and the same judgment.

By these appeals, accused/appellants Lalji, Ashok Kumar & Rasbai have questioned legality and correctness of the judgment of conviction and order of sentence dated 29-7-1997 passed by the Additional Sessions Judge, Janjgir, in Sessions Trial No.402/95, whereby learned Additional Sessions Judge after holding accused Lalji, Sukwara Bai, Ashok Kumar, Dilharan & Rasbai guilty for commission of offence under Sections 148, 302 read with Section 149, 302 read with Section 149, 302 read with Section 149 & 307 read with Section 149 of the I.P.C., sentenced each of the accused to undergo imprisonment for life for each murder of Saheblal, Ratanbai & Santkumar and also sentenced each of the

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आदेश पत्रक (पूर्वानुबद्ध)

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accused to undergo R.I. for ten years under Section 307 read with Section 149 of the I.P.C. for attempting to commit the murder of Shoukilal. Further, each of the accused was sentenced to undergo R.I. for three years for commission of offence under Section 148 of the I.P.C.

The appeal filed by Sukwara Bai namely, Criminal Appeal No.1927/1997 was dismissed for non-prosecution because learned counsel for appellant Sukwara Bai submitted that Sukwara Bai has already been released on probation on 19-7-2004, therefore, he is not interested in prosecuting this appeal. The appeal filed by Dilharan namely, Criminal Appeal No.1781/1997 has also been dismissed for non-prosecution because learned counsel for appellant Dilharan submitted that accused Dilharan has been released on probation on 14-3-2006.

Similarly, Mr. Abhay Tiwari, learned counsel for the appellants in Cr.A. No.2363/1997, submits that accused Lalji has also been released on mercy petition on 28-8-2004. Therefore, Mr. Abhay Tiwari submitted that he is not prosecuting the appeal as far as accused Lalji is concerned, as on 4-4-2006, the appeal of Lalji has also been dismissed for non-prosecution.

Now, the appeals in respect of accused Ashok Kumar & Rasbai are being disposed of.

Case of the prosecution, in brief, is that Kum. Purnima (PW-1) lodged the report Ex.P-1 in out post Baloda of Police Station: Akaltara on 11-6-1995 to the effect that she is resident of Village: Thadgabehra as there was a dispute regarding the agricultural field between Lalji Satnami and her father since last 4-

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आदेश पत्रक (पूर्वानुबद्ध)

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5 years, that day morning Lalji along with his son Ashok Kumar, his wife Kantibai, wife of Lalji, Sukwara Bai, Dilharan and one more lady went for sowing paddy in the disputed agricultural field. On coming to know about this fact, at about 6 a.m. her father Saheblal, mother Ratanbai, brother Santkumar & Shoukilal went to the agricultural field in order to ask them not to cultivate their field. After some time, she heard a commotion on which she along with her sister-in-law Kaushalya Bai went to see as to what is happening. On seeing them, Ashok Kumar, Lalji & Dilharan rushed towards them to attack them, therefore, they ran away. Thereafter, Ashok Kumar & Lalji left the field. Again she along with her sister-in-law went to the field to see their family members and they saw that her mother Ratanbai, father Saheblal and elder brother Sant Kumar were murdered by Lalji, Ashok Kumar, Dilharan, Sukwara Bai etc. Hand & leg of Shoukilal were chopped. When they went to see, they saw that those persons were assaulting them therefore, they ran away.

Receiving this report Ex.P-1, the in-charge out post Baloda forwarded the same to the Station House Officer, Police Station: Akaltara. Based on that, F.I.R. Ex.P-58 was registered by the S.H.O. for commission of offence under Sections 147, 148, 149, 307 & 302 of the I.P.C. Merg intimation Ex.P-2 was also given by Deendayal. Under Ex.P-3, the Investigating Officer seized the chopped leg & hand of Shoukilal and sent Shoukilal along with chopped hand & leg for treatment to Primary Health Centre, Baloda, where Dr. V. Khetrapal prepared the report Ex.P-4.

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The body of **Saheblal** was sent for post-mortem examination to Primary Health Centre, Baloda under Ex.P-5 where Dr. S.C. Mishra (PW-5) conducted post-mortem, prepared the post-mortem report Ex.P-6 and opined that the death of Saheblal was due to shock & haemorrhage and the death was homicidal in nature. As per the post-mortem report (Ex.P-6),

(i) there was one incised wound on the right leg 8 cms. below from knee joint in the size of 8 cms. x 4 cms. x 7 cms. both bones tibia & fibula were found cut with all muscles, veins, arteries and leg was separated from that place, margins were clear cut;

(ii) two punctured wounds at the centre of right thigh outer front side, upper 2 cms. x ¾ cms. x 7 cms., lower 2 cms. x ¼ cms. x 7 cms. and there was fracture of right leg below the injury;

(iii) punctured wound on the left leg in the size of 5 cms. x 2 ½ cms. x 8 cms. both tibia & fibula fractured under the injury;

(iv) punctured wound in the size of 5 cms. x ½ cms. x 7 cms. below chin; and

(v) incised wound on mid occipital region in the size of 6 cms. x 2 cms. brain deep, fracture of skull was present.

The body of **Ratanbai** was also sent for post-mortem examination to Primary Health Centre, Baloda under Ex.P-7 where Dr. S.C. Mishra (PW-5) conducted post-mortem, prepared the post-mortem report Ex.P-8 and opined that the cause of death was due to shock & haemorrhage, and the death was homicidal in nature. He noticed the following injuries: -

(i) incised wound 3 cms. x ½ cms. x scalp deep on head right side parietal region;

आदेश पत्रक (पूर्वानुबद्ध)

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(ii) incised wound on head 2 cms. back injury No.(i) - 4 cms. x ½ cms. x bone deep with fracture on parietal region;

(iii) complete amputation of right forearm from wrist joint 6 cms. above, all skin muscles, arteries, veins, nerves & bones were completely separated;

(iv) complete amputation of left leg 8 cms. from ankle joint, all skin, muscle, bone, arteries, veins, nerves completely separated;

(v) left radius and ulna fractured from the centre with accumulated blood clot, there was a fracture under injury No.(ii).

All injuries were ante-mortem in nature.

The body of **Santkumar** was sent to Primary Health Centre, Baloda, under Ex.P-9 where Dr. S.C. Mishra (PW-5) conducted post-mortem and prepared the post-mortem report Ex.P-10. He was of the opinion that the death was due to shock & haemorrhage and same was homicidal in nature. He noticed the following injuries on the body of Santkumar: -

(i) incised wound on head temporal right side 10 cms. x 2 cms. x brain matter head bone fractured;

(ii) incised wound 5 cms. x back from injury No.(i) on head 5 cms. x 2 cms. x brain head bone fractured;

(iii) incised wound on left parietal bone 5 cms. x 2 cms. x brain matter head bone fractured;

(iv) left leg completely amputated with bones separated blood vessels above left ankle;

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आदेश पत्रक (पूर्वानुबद्ध)

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(v) right forearm separated amputated 13 cms. from wrist joint with both bone muscle vessels and skin was cut.

After giving notice Exs.P-23, P-24 & P-25 to the Panchas, the Investigating Officer, prepared the inquest Ex.P-26 of the body of Saheblal, Ex.P-27 of the body of Ratanbai and Ex.P-28 of the body of Santkumar. Under Ex.P-30, the Investigating Officer seized the clothes of Saheblal, Ratanbai & Santkumar. Under Ex.P-31, the I.O. seized one iron carpenter axe and one axe from the house of accused Lalji. Clothes of Lalji were seized under Ex.P-32. Clothes of Sukwara Bai were seized under Ex.P-33. Clothes of Ashok Kumar were seized under Ex.P-34. House of Lalji was searched and search memo Ex.P-35 was prepared. One carpenter axe and axe stained with blood were seized. Plain soil and blood stained soil were taken into possession from the place where three bodies were lying. Under Ex.P-39, one axe, one bamboo stick, one bat of Kulhadi, one Kulhadi and one Rampa were seized from the place of occurrence. Under Ex.P-40, one Lathi, one iron Barchi, one bamboo stick and one bamboo Genda were seized. During the custody, Dilharan gave memorandum Ex.P-41 and in pursuance of that, his clothes were seized under Ex.P-42. One Kori, weapon of offence, was seized under Ex.P-43. The site plan (Ex.P-44) of the place of occurrence was prepared by the Patwari. Papers regarding the land were also seized.

After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate, First Class, Janjgir, who in turn, committed the case to the Sessions Judge, Bilaspur, from where learned Additional Sessions Judge, Janjgir, received the case on transfer for trial.

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The prosecution in order to establish charge against the accused persons examined 14 witnesses. Statements of the accused persons were recorded under Section 313 of the Cr.P.C. Accused Ashok Kumar denied the incriminating material appearing against him in the prosecution evidence and stated that he is innocent, he has been falsely implicated on account of animosity. Rasbai also denied the incriminating material appearing against her in the prosecution evidence and stated that she is innocent, she has been falsely implicated on account of animosity.

After hearing counsel for respective parties, learned Additional Sessions Judge convicted and sentenced each of the accused as aforementioned.

We have heard Mr. Abhay Tiwari, learned counsel for accused/appellant Ashok Kumar; Mr. Vinod Tekam, learned counsel for accused/appellant Rasbai and Mr. Akhil Mishra, learned Panel Lawyer on behalf of the State/respondent.

Learned counsel for both the appellants have not disputed the homicidal death of Santkumar, Ratanbai & Saheblal. Apart from the evidence of Shoukilal (PW-2), the injured witness, as also the medical evidence of Dr. S.C. Mishra (PW-5), it established that the deaths of Santkumar, Ratanbai & Saheblal were homicidal in nature.

As far as involvement of accused/appellants Ashok Kumar & Rasbai in the crime in question is concerned, perusal of the first information report (Ex.P-1) given by Kum. Purnima (PW-1) shows that the name of Rasbai has not been mentioned, only it has been mentioned that Lalji, Ashok Kumar, Dilharan, Sukwara

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Bai and others murdered Santkumar, Ratanbai & Saheblal. Even the perusal of the evidence of Kum. Purnima shows that in fact she was not the eyewitness to the incident. While the accused persons were attacking the deceased persons, she only went to the place of occurrence after the accused persons left the place after the commission of crime.

Shoukilal (PW-2) is the material witness who was present in the field along with the deceased persons and who also sustained severe injuries as his hand & leg were chopped in the incident. In his evidence as PW-2, he has stated that all the five accused persons came in which Rasbai was also there. In para 5, he has stated that Sukwara Bai & Rasbai attacked his mother Ratanbai with Barchi on her head. In the same para, he has also stated that Rasbai attacked her with a Lathi. In para 6, he has further stated that Rasbai has broken his teeth by assault of Lathi. In cross-examination para 25, he has stated that the name of Rasbai was not known at the time of incident, her name was disclosed by his sister and Rasbai was not seen in the village before the incident. In Ex.D-1, the police case diary statement, it has been written that Rasbai was throwing stones, how it has been written he does not know. It is incorrect to say that Rasbai was not present at the scene of occurrence. It is also incorrect that there was no stick in her hand and she has not assaulted. It is also incorrect that Rasbai had not assaulted and broken his teeth, this was disclosed by him to the Police, but why it has not been mentioned in Ex.D-1, he does not know. When his statement was taken in the hospital by the doctor, he disclosed the name of Rasbai. Why the name of Rasbai has not been mentioned in the dying declaration recorded by Dr. S.C. Mishra (PW-5), he does not know. Whereas, perusal of the dying declaration of this witness

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recorded by the doctor shows that in para 4 it has been written that Ashok Kumar, Lalji, Dilharan & Sukwara Bai and one lady whose name is not known attacked, but it has not been disclosed by this witness to the doctor that the fifth person, the lady, has attacked him with Lathi, broken his teeth and she has attacked his mother Ratanbai on her head. Whereas, in the police case dairy statement (Ex.D-1) it is mentioned that Rasbai was throwing earthen clots. Therefore, this witness has made improvement in his evidence before the Court and there is nothing on record which shows that the teeth of this witness were broken.

In the circumstances, in view of the above facts, the evidence of this witness (PW-2) in respect of Rasbai appears to be aggravated improvement and based on that without any corroboration in material particulars by other evidence, Rasbai cannot be held guilty for offence under Sections 302 read with Section 149, 307 read with Section 149 & 148 of the I.P.C. Therefore, conviction and sentence imposed upon accused/appellant Rasbai is not based on any legal, clinching evidence and finding of the trial Court to that extent cannot be sustained.

As far as involvement of accused/appellant Ashok Kumar in the crime in question is concerned, the name of Ashok Kumar has been mentioned in the F.I.R. Shoukilal (PW-2), the injured witness, whose hand & leg were chopped in the incident has stated in his evidence that there was a dispute between his father & Lalji regarding the agricultural land. On the fateful day, accused Lalji, Dilharan, Ashok Kumar & Sukwara Bai came on the field and they started quarreling with them. Ashok Kumar was carrying axe, he along with Lalji & Dilharan attacked his

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father with the weapons they were carrying. Ashok Kumar attacked his father from the sharp edged side of the axe on the head of his father. Ashok Kumar also attacked with the axe on the head of his brother and the hand of his brother was chopped by accused Ashok Kumar and thereafter, his brother succumbed to the injuries sustained by him. In para 5 of his evidence, he has further stated that Ashok Kumar chopped leg & hand of his mother Ratanbai. Thereafter, Ashok Kumar and Lalji rushed towards him to attack him and accused Ashok attacked him with axe on his head, which was shown by this witness in the Court. His left leg was chopped by accused Ashok Kumar by the assault of axe. The witness showed his leg also to the Court which was chopped below the knee. He has further stated that they left him considering him dead and he became unconscious. After one hour, he regained conscious, his sister Purnima came and gave water to drink. Thereafter, he was taken to the hospitals at Baloda and Bilaspur. He remained admitted in the General Hospital at Bilaspur for about 2 $\frac{1}{2}$-3 months.

Mr. Abhay Tiwari, learned counsel appearing on behalf of accused/appellant Ashok Kumar, was not able to point out in cross-examination of this witness (PW-2) anything to show that the evidence of this witness in respect of Ashok Kumar is not trustworthy or reliable. The evidence of this witness in respect of the involvement of Ashok Kumar stands corroborated by the medical evidence also and even hand & leg of this witness were chopped by making assault with axe by this accused, which this witness had shown in the Court. Even head injury was also inflicted by this accused on this witness, which also was shown by this witness in the Court. There is nothing to indicate that this accused has been falsely

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implicated by this witness and the evidence of this witness corroborated by the medical evidence inspires confidence of the Court.

Therefore, we do not find any illegality or infirmity in the finding of the trial Court convicting accused/appellant Ashok Kumar under Sections 302 read with Section 149 for each murder of Saheblal, Santkumar & Ratanbai & 307 read with Section 149 of the I.P.C. for attacking Shoukilal and attempting to commit his murder, also under Section 148 of the I.P.C. for carrying deadly weapon while member of the unlawful assembly.

In the circumstances, there is no merit in Criminal Appeal No.2363/1997 in respect of accused/appellant Ashok Kumar, same is liable to be dismissed and it is hereby dismissed.

As far as Criminal Appeal No.1741/1997 preferred by accused/appellant Rasbai is concerned, same succeeds and it is allowed. Conviction and sentences imposed upon her for commission of offence under Sections 302 read with Section 149, 307 read with Section 149 & 148 of the I.P.C. are set aside, she is acquitted of the said charges. She is already on bail, therefore, her bail bonds are discharged. She need not surrender before the Court.

Parties are entitled for certified copy of this order.

Sd/-
L.C. Bhadoo
Judge

Sd/-
DHIRENDRA MISHRA
Judge

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